

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated June 04, 2009
Reply to Office Action mailed on March 06, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 7-10 and 19-28, 30-31, and 33-34 are pending in the present application. No additional claims fee is believed to be due.

Claims 23 and 28 are amended. Support for these amendments is found, for example, at paragraphs 0023-0024 and Fig. 6 of the specification.

Claim 29 is cancelled without prejudice.

Claims 33 and 34 are added. Support for claims 33 and 34 can be found, for example, in paragraph 0022 of the specification.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112, First Paragraph

The Office Action stated that claims 7-10, 19-22 and 24 were rejected under 35 USC §112, first paragraph, over the limitation “wherein the plurality of void spaces extend through the thickness of the film.” This rejection is traversed and reconsideration is respectfully requested.

Applicants submit the above limitation is supported in the specification at paragraphs 0023, 0024, and Fig. 6, for example. These paragraphs discuss a web which has a coating or layer. The coating can bridge the void spaces, completely fill the void spaces, partially fill the void spaces, partially bridge the void spaces, or a combination thereof (paragraphs 0023-0024 and see Figs. 3-6 which give examples of these embodiments). One result of having a coating which partially fills a void space is a product where the void space extends through the thickness of the film (see, for example, Fig. 6, where the void spaces extend through the thickness of the film). In light of the

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated June 04, 2009
Reply to Office Action mailed on March 06, 2009
Customer No. 27752

above, Applicants submit the limitation “wherein the plurality of void spaces extend through the thickness of the film” is supported by the specification whereby the rejection under 35 USC §112, first paragraph is overcome and reconsideration is respectfully requested.

Rejection Under 35 USC §102(e) As Being Anticipated By Willison et al

The Office Action stated that claims 28-31 were rejected under 35 U.S.C. 102(e) as being anticipated Willison et al. (US 2004/0005277) (Willison). Applicants traverse this rejection and respectfully request reconsideration.

The only independent claim addressed in this rejection is claim 28. Claim 28 is directed to a mesh having a first side and second side and comprising a plurality of coated fibers, the coated fibers are arranged to provide a plurality of void spaces *that extend from the first side of the mesh to the second side of the mesh*; and wherein the fiber coating *partially fills* the void spaces and comprises a water hydratable polymer and a tooth whitening agent (emphasis added).

The Office Action characterized Willison as teaching a scrim which is surrounded by an oral care layer and the coated fibers provided a plurality of void spaces that extend from the first side of the mesh to the second side of the mesh. First, Applicants submit they could find no teaching relating to an embodiment where the coated fibers created void spaces in the mesh as stated in the Office Action. In fact, Willison discusses on multiple occasions that the scrim is preferably imbedded in the oral care layer (paragraph 0085) and the oral care layer completely surrounds the scrim (paragraph 0089). Secondly, the Office Action pointed to no teachings in Willison relating to a coating which partially fills the void spaces of the mesh. If considered an inherent property, inherency may not be established by "probabilities or possibilities", *Scaltech, Inc. v. Retec/Tetra, LLC.*, 51 USPQ2d 1055, 1059 (Fed. Cir. 1999). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient", *In re Oelrich*, 212 USPQ 323, 326 (CCPA 1981). As Examiner is aware, anticipation under 35 U.S.C. §102 requires the disclosure in a single prior art

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated June 04, 2009
Reply to Office Action mailed on March 06, 2009
Customer No. 27752

reference of each element of the claims under consideration, *Alco Standard Corp. v. TVA*, 1 U.S.P.Q.2d 1337, 1341 (Fed. Cir. 1986). As Willison fails to teach all of the limitations of independent claim 28, Applicants submit that claim 28, and those dependent thereon are novel over Willison. Reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Willison In View of Chen

Claims 23 and 25-27 have been rejected under 35 USC §103(a) as being unpatentable over Willison in view of Chen et al. (US 6,261,679) (Chen). This rejection is traversed and reconsideration respectfully requested.

Independent claim 23 is directed to a tooth whitening product, comprising: a film having a thickness and comprising a first water hydratable polymer and a tooth whitening agent; a mesh comprising a plurality of fibers, the fibers arranged to define a plurality of void spaces between the fibers and the plurality of fibers comprise a second water hydratable polymer; and wherein the film partially fills the mesh. The Office Action stated that Willison did not disclose fibers which comprise a hydratable polymer and looked to Chen to fill the void.

As noted above for claim 28, it is submitted that the Office Action has pointed to no teaching in Willison regarding where the film (coating in claim 28) partially fills the mesh. For claim 23 and claims 25-27 which depend therefrom, it is respectfully submitted that Willison in view of Chen does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 23. The deficiencies of Willison are discussed above and the Office Action points to no teachings in Chen which would cure Willison's deficiencies. As such, claim 23 and those claims dependent therefrom are nonobvious over Willison in view of Chen and reconsideration is respectfully requested.

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated June 04, 2009
Reply to Office Action mailed on March 06, 2009
Customer No. 27752

Rejection Under 35 USC §103(a) Over Leaderman

The Office Action stated that claims 8-10, 19, 20, and 22-31 were rejected under 35 USC §103(a) over Leaderman (US 2002/0061329) (Leaderman). This rejection is traversed and reconsideration respectfully requested.

Independent claims 23 and 28 are discussed above. Independent claim 19 recites in relevant part a tooth whitening product comprising a film and a mesh comprising a plurality of fibers which are arranged to define a plurality of void spaces which extend through the thickness of the film.

The Office Action characterized Leaderman as teaching a system which delivered whitening agents to the teeth where the gel, film, or foam of the invention can be used to coat fibers of an absorbent gauze dressing, nonporous, porous, or microporous fabric by soaking, spray coating, or dip coating. The Office Action contended that gels that are applied by soaking, spraying, or dip coating, would encompass void spaces which extend through the thickness of the film and partially fill the mesh. To the contrary, Applicants contend they can find no teaching in Leaderman relating to how any of the methods of coating listed in Leaderman would lead to a product which would have void spaces which would extend through the thickness of the film (claim 19), through the thickness of the mesh (claim 23) or would result in a partial filling of the mesh (claims 23 and 28). Additionally, if considered an inherent property, inherency may not be established by "probabilities or possibilities", *Scaltech, Inc. v. Retec/Tetra, LLC.*, 51 USPQ2d 1055, 1059 (Fed. Cir. 1999). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient", *In re Oelrich*, 212 USPQ 323, 326 (CCPA 1981). In addition, the Office Action points to no teaching in Leaderman relating to the plurality of fibers in the mesh comprising a water hydratable polymer as recited in claims 21 and 23.

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated June 04, 2009
Reply to Office Action mailed on March 06, 2009
Customer No. 27752

As such, it is respectfully submitted that Leaderman does not establish a *prima facie* case of obviousness because the Office Action fails to point to teachings relating to all of the limitations of independent claims 19, 23, and 28. Therefore, claims 19, 23, 28, and those claims dependent therefrom are nonobvious over Leaderman and reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Jones

The Office Action stated that claims 10, 19, 20, 22-24, 28 and 29 were rejected under 35 USC §103(a) over Jones et al (US 2005/0260544) (Jones). This rejection is traversed and reconsideration respectfully requested.

Independent claims 19, 23, and 28 are discussed above.

The Office Action characterized Jones as teaching delivery systems for delivering oral care substances to teeth comprising an absorbent material and a tooth whitening gel, where the whitening may be impregnated into the absorbent material's bulk. The Office Action further stated that the absorbing or impregnating of the gel into the absorbent material encompassed where void spaces extend through the thickness of the film and partially fills the mesh. To the contrary, Applicants contend they can find no teaching in Jones relating to how absorbing or impregnating the absorbent material with a gel would lead to a product which would have void spaces which would extend through the thickness of the film (claim 19), through the thickness of the mesh (claim 23) or would result in a partial filling of the mesh (claims 23 and 28). Additionally, if considered an inherent property, inherency may not be established by "probabilities or possibilities", *Scaltech, Inc. v. Retec/Tetra, LLC.*, 51 USPQ2d 1055, 1059 (Fed. Cir. 1999). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient", *In re Oelrich*, 212 USPQ 323, 326 (CCPA 1981). In addition, the Office Action points to no teaching in Jones relating to the plurality of fibers in the mesh comprising a water hydratable polymer as recited in claim 23.

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated June 04, 2009
Reply to Office Action mailed on March 06, 2009
Customer No. 27752

As such, it is respectfully submitted that Jones does not establish a *prima facie* case of obviousness because the Office Action fails to point to teachings relating to all of the limitations of independent claims 19, 23, and 28. Therefore, claims 19, 23, 28, and those claims dependent therefrom are nonobvious over Jones and reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Jones In View of Ruben

The Office Action stated that claim 7 was rejected under 35 USC §103(a) over Jones in view of Ruben (US 6,146,655) (Ruben). This rejection is traversed and reconsideration respectfully requested.

It is respectfully submitted that Jones in view of Ruben does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 19, from which claim 7 depends. The deficiencies of Jones with respect to independent claim 19 are discussed above and the Office Action points to no teaching in Ruben which would cure its deficiencies. As such, claim 7 is nonobvious over Jones in view of Ruben and reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Jones In View of Chen

The Office Action stated that claim 21 was rejected under 35 USC §103(a) over Jones in view of Chen. This rejection is traversed and reconsideration respectfully requested.

It is respectfully submitted that Jones in view of Chen does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 19, from which claim 21 depends. The deficiencies of Jones with respect to independent claim 19 are discussed above and the Office Action points to no teaching in Chen which would cure its deficiencies. As such, claim 21 is nonobvious over Jones in view of Chen and reconsideration is respectfully requested.

Appl. No. 10/659,100
Docket No. 9031
Amdt. Dated June 04, 2009
Reply to Office Action mailed on March 06, 2009
Customer No. 27752

Conclusion

Newly Added Claims 33-34

Newly added claims 33 and 34 depend from independent claim 28. In light of the arguments above regarding the failure of the cited art to teach all of the limitations of independent claim 28, Applicants submit these newly added claims are novel and nonobvious over the cited art as applied to claim 28.

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By /Carrie M. Benjamin/
Carrie M. Benjamin
Registration No. 58,861
(513) 983-3449

Date: June 04, 2009
Customer No. 27752